

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

Civil No.

HEATHER ALEXANDER FERGUSON,)
individually and d/b/a the AWARE GROUP,)
and INTERNATIONAL)
BUSINESS SYSTEMS,)
)
Defendant.)

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

Nature of Action

1. This is a civil action brought by the United States of America under §§ 7402 and 7408 of the Internal Revenue Code (26 U.S.C.) (I.R.C.) to enjoin defendant, Heather Alexander Ferguson, both individually and doing business as the Aware Group and International Business Systems or any other name, and all those in active concert or participation with her, from engaging in conduct subject to penalty under 26 U.S.C. §§ 6700 and 6701, including making, in connection with the organization or sale of any plan or arrangement, any statement about the securing of any tax benefit that the defendant knows or has reason to know is false as to any material matter; and from engaging in any other conduct that is subject to penalty under any provision of the Internal Revenue Code or that substantially interferes with the proper administration and enforcement of the internal revenue laws.

2. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, under the provisions of I.R.C. §§ 7402 and 7408.

3. Jurisdiction exists under 28 U.S.C. §§ 1340 and 1345, and I.R.C. §§ 7402(a) and 7408.

Defendant

4. Heather Alexander Ferguson resides in Laurens, South Carolina.

5. Ferguson conducted business through the Aware Group and International Business Systems, both located at 2435 East North Street, Suite 136, Greenville, South Carolina 98055.

Facts Common to Defendant's Tax-Fraud Schemes

6. Beginning in 1996, Ferguson, individually and as an associate of John-Howard Alexander ("Alexander"), promoted several tax-fraud schemes using the Aware Group and International Business Systems.

7. After marrying Alexander in 1997, Ferguson became co-director of the Aware Group and formed International Business Systems, which was incorporated in the Caribbean Island of Nevis and was used to receive payments for membership fees and products sold by the Aware Group.

8. The schemes marketed by the Aware Group, Ferguson, and Alexander included the "U.S.-source," "reliance," and "redemption" tax-fraud schemes. The Aware Group, Ferguson, and Alexander also instructed customers on methods to conceal assets in order to evade IRS collection efforts. The Aware Group marketed these tax-fraud schemes as part of memberships sold for between \$295 and \$2,495.

9. On April 29, 2004, Alexander and Ferguson divorced. As part of the Final Decree of Divorce, Alexander agreed to retire as the director of the Aware Group. Ferguson retained ownership over the business, but was required to make payments to Alexander related to the sale of cd/audiotapes of seminars conducted by Alexander. The decree further provided that Alexander retained ownership of Aware Group's trust-related products, which were then sold by him through the Freedom Trust Group.

10. Ferguson and Alexander were the sole promoters and salesmen of the tax-fraud scheme sold by the Aware Group.

11. On December 1, 2004, Ferguson modified her agreement with Alexander. As part of the modified agreement, Ferguson, for a fee of \$75 per hour, managed the websites through which Alexander sold tax-fraud schemes, and Alexander relinquished any right to payments from the Aware Group.

The "U.S.-Source" Tax-Fraud Scheme Promoted by the Aware Group

12. As part of the "U.S.-source" tax-fraud scheme, Defendant falsely advised customers that income from sources within the United States is not subject to federal income tax payment or reporting requirements. Defendant falsely advised customers that U.S. citizens are "non-resident aliens" or "sovereign State citizens" and are not required to pay taxes or report income on income earned while working in the United States. As part of the U.S.-source tax-fraud scheme, Defendant sold to customers a document titled "Confidential Report on Taxable Income," part of a cd series provided by Aware Group. The "Confidential Report on Taxable Income" falsely states, *inter alia*, that:

a. “The strict limits of federal power imposed by the Constitution prohibited Congress from imposing a tax on the income[] of United States citizens who live and work exclusively in the 50 states.”

b. “taxable ‘sources’ [of income] apply only to those engaged in international or foreign commerce, but do not apply to United States citizens living and working exclusively within the United States.”

c. “the ‘specific sources’ of income subject to the income tax” are “list[ed] in 26 C.F.R. § 1.861-8(f)(1).”

13. As part of the scheme, Defendant prepared and sold a document titled “Affidavit: Certificate of Citizenship” for customers to file in their state of residence. Defendant falsely advertised that, by filing the document, customers were “sovereign State citizens” who are not subject to income tax filing requirements. The document falsely states that the named individual is a “non-resident alien outside both general and tangential venue and jurisdiction of Title 26, USC” because the federal United States is allegedly limited to “District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, and American Samoa.”

14. As part of the scheme, Defendant sold customers a document demanding the statutory authority for taxing “sovereign State citizens,” which Defendant advised customers to send to the IRS. Defendant falsely advised customers that the IRS’s failure to respond would result in an implied agreement between the customer and the IRS that the false statements regarding tax laws are correct, and would release the individual from any obligation to file income tax returns or pay taxes.

The “Reliance” Tax-Fraud Scheme Promoted by the Aware Group

15. Defendant also promoted a “Reliance Defense” tax-fraud scheme as part of an Aware Group cd-series sold to customers. The Reliance Defense package contains several false statements regarding the federal income tax, including, *inter alia*, that:

a. U.S. citizens can “relinquish” their Social Security numbers and are no longer obligated to file tax returns, pay income taxes, or perform other duties imposed by the Internal Revenue Code.

b. “American” nationals, or “sovereign State citizens,” are not required to pay or report income taxes.

c. American nationals, or “sovereign State citizens,” have no “contractual nexus” with the United States and are not required to file tax returns or pay income taxes on wages.

d. The U.S. Supreme Court ruled that the 16th Amendment created no new power of taxation and did not amend or change the constitutional limits that forbid any direct taxation on individuals. Thus, Defendant falsely advised that the current laws relating to income tax, Social Security, and related taxes, have never applied to anyone other than appointed and elected government officials or employees.

e. Individuals can immunize their property from tax liens by applying for “land patents.”

16. As part of the scheme, Defendant falsely advised customers that they can justify their failure to file income tax returns by purchasing “Reliance Defense Letters,” which contain fraudulent tax arguments. As part of the Reliance Defense tax-fraud scheme, Defendant sold customers a list of purported professionals who would provide written opinion letters for fees

ranging between \$50-150 per letter. The “Reliance Defense Contact” letters, advocating the false statements stated in paragraph 15, and sold by Defendant include:

a. A letter from William Conklin, purporting to be a tax expert and paralegal, which falsely advises that income tax reporting requirements are “voluntary,” and not required.

b. An opinion letter from Guy Curtis, a Nebraska attorney, which erroneously states that the income tax does not apply to wages.

c. An opinion letter from Thomas Price, purporting to be a former magistrate judge, stating that the federal income tax is voluntary.

d. An opinion letter from Eduardo Rivera, a California attorney who was enjoined from preparing similar letters, *United States v. Rivera*, 2003 U.S. Dist. LEXIS 15823 (C.D. Cal. July 23, 2003), falsely stating that the income tax does not apply to wages.

e. An opinion letter from John “Judge” Rizzo, a former municipal court judge who pled guilty to felony charges of willfully aiding and assisting in the preparation of false income tax returns (*United States v. Rizzo, et al.*, Case No 2:03-cr-00345-ROS (D. Ariz.)). The letter falsely states that individuals are not liable for income tax payment and reporting requirements.

17. As part of the scheme, Defendant sold customers a document, containing frivolous arguments similar those in the letter sold as part of the “U.S.-source” scheme, which Defendant advised customers to send to the IRS. Defendant falsely advised customers that if the IRS did not respond, it had impliedly agreed that the frivolous arguments are correct and that the individual is no longer obligated to file income tax returns. Defendant advised customers that

these documents provided a “reliance defense” to potential criminal tax charges asserted against the customers.

The “Redemption” Tax-Fraud Scheme Promoted by the Aware Group

18. Defendant also promoted a “Redemption” tax-fraud scheme as part of an Aware Group cd-series sold to customers. The Redemption package falsely states, *inter alia*, that: The United States Government is a corporation that created a fictional “strawman” of all U.S. citizens. Defendant falsely advises customers that tax debts are not owed by the individual, but by a “fictional strawman” with the same name created by the Government.

19. As part of the scheme, Defendant falsely advised customers that by filing income tax returns in past years, they impliedly entered a contract assuming the debts of the “strawman.”

20. As part of the scheme, Defendant falsely advised that customers can “redeem” their identity and revoke an “implied” contractual requirement to pay the “strawman’s” income taxes, by filing with federal or state agencies U.C.C. documents, that are prepared by Defendant. As part of the scheme, Defendant advised customers that, after “redeeming” their identity, they are no longer required to file returns or pay taxes.

21. As part of the scheme, Defendant falsely stated that the purported implied contract extends to Social Security tax requirements. In order to help customers evade federal employment taxes, Defendant prepared and sold to customers documents purporting to “relinquish” Social Security numbers, after which the customer is purportedly no longer obligated to pay employment taxes or have income taxes withheld by employers.

22. As part of the scheme, Defendant falsely advertised that the purported implied contract extends to federal courts. Defendant prepared and sold to customers documents

purporting to permit them to legally refuse with impunity to obey any summons or other directive from federal courts.

The Asset Concealment Schemes Promoted by the Aware Group

23. As part of the U.S.-source, Reliance, and Redemption tax-fraud schemes and to help customers evade the federal income tax payment requirements, Defendant advised customers to:

a. Conceal assets by stop using bank accounts. As part of the scheme, Defendant advised customers to deal only in cash or postal money order so that the IRS can neither compute nor collect the proper amount of tax due.

b. Conceal income from the IRS by not filing tax returns so that the IRS cannot identify the customer's amount or source of income.

c. Conceal income and property by developing a series of multi-layered trusts “to create a diversion of paperwork and closed doors for an outsider trying to pry into your affairs.” As part of this scheme, the Aware Group instructed customers controlling the trusts to record liens in the name of the trust against their personal property in excess of the amount of any tax liability, in order to fraudulently thwart IRS collection efforts.

24. As part of a tax-fraud scheme to help customers evade the federal income tax payment requirements on unreported income, Alexander and Ferguson aided customers by creating a series of bogus domestic and foreign trusts to conceal assets and hinder IRS collection. Defendant and Alexander advised customers that they could place personal property, including wage or business income, in the trusts, while retaining beneficial use of the property. Defendant and Alexander falsely advised that the trust's income is not taxable because it is not U.S.-source, or “effectively connected” with a U.S. trade or business.

**Defendant's Knowledge of the Falsity
of the Tax Benefits of Her Tax-Fraud Schemes**

25. Ferguson held herself out as a tax expert by participating in tax-law-related seminars, and therefore she knew or should have known that tax-fraud schemes promoted by the Aware Group were unlawful.

26. Ferguson knew that in 2001 or 2002 a customer had sued the Aware Group for the cost of the ineffective fraudulent tax arguments.

27. Ferguson knew or should have known that John Rizzo, who wrote "Reliance Defense" letters for Aware Group customers, was indicted on April 2, 2003, and pled guilty on February 4, 2004 to felony charges of willfully aiding and assisting in the preparation of a false income tax returns.

28. Ferguson knew or should have known that a federal district court on July 18, 2003, enjoined Eduardo Rivera, who wrote "Reliance Defense" letters for Aware Group customers falsely stating that the income tax does not apply to wages, from preparing similar letters.

29. Ferguson knew or should have known that on October 3, 2001, the Tax Court sanctioned a customer in the amount of \$25,000 for advancing frivolous arguments sold by Defendant.

30. Ferguson admitted in an affidavit executed on February 2, 2006, and attached as Exhibit 1, that: "[T]he information [she] provided to [her] clients is in contradiction to Title 26 of the United States Code."

Harm to the Government

31. The tax-fraud schemes promoted and marketed by Ferguson and Alexander through the Aware Group harm the government by fraudulently reducing customers' reported tax liabilities. Based on the Aware Group's customer list, it is possible that more than 2,000 taxpayers have used Defendant's tax-fraud schemes to evade income taxes.

32. The Internal Revenue Service is harmed because it must dedicate some of its scarce resources to detecting and examining inaccurate returns filed by Aware Group customers, to file substitutes for returns for customers failing to file tax returns, and to attempt to recover unpaid taxes.

33. The IRS estimates that during 2001 the difference between the amount of taxes paid by U.S- taxpayers, and the amount that should have been paid, equaled \$345 billion. *See* <http://www.irs.gov/newsroom/article/0,,id=154496,00.html>. Tax-fraud schemes, such as those promoted by Defendant contribute to the under-reporting of taxes estimated in the report.

34. Based on a sample of Aware Group's customers who were audited, the IRS estimates that the tax loss resulting from Defendant's schemes may exceed \$48 million. Some of this revenue loss may never be recovered.

35. Defendant's background and extensive involvement in these elaborate tax-fraud schemes indicate that the misconduct described in this complaint or other similar misconduct is likely to recur unless she is permanently enjoined.

Count I: Injunction under I.R.C. § 7408 for violations of §§ 6700 & 6701

36. The United States incorporates by reference the allegations in paragraphs 1-35.

37. I.R.C. § 7408 authorizes a district court to enjoin any person from, *inter alia*, engaging in conduct subject to penalty under I.R.C. §§ 6700 or 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

38. Section 6700 penalizes any person who, in connection with organizing or participating in the sale of a plan or arrangement, makes or furnishes a statement regarding any tax benefit that the person knows or has reason to know is false or fraudulent as to any material matter.

39. Section 6701 penalizes any person who prepares a document that he has reason to believe will be used in connection with any material matter arising under the internal revenue laws and who knows that the document, if so used, would result in an understatement of another person's tax liability.

40. Defendant organizes and sells plans that she falsely claims allow her customers legally to stop paying federal taxes and filing federal tax returns.

41. In organizing and selling tax-fraud plans, Defendant made false or fraudulent statements regarding the excludibility of income and the securing of other tax benefits.

42. Defendant knows or has reason to know her promotional materials contain false or fraudulent statements within the meaning of I.R.C. § 6700.

43. Defendant prepared and sold to customers affidavits, U.C.C. statements, and bogus trust packages, and other fraudulent documents within the meaning of I.R.C. § 6701, which falsely promised tax benefits to customers.

44. Defendant knew or had reason to believe the fraudulent documents falsely understated customers' tax liabilities, and would be used in connection with a material matter within the meaning of I.R.C. § 6701.

45. If she is not enjoined, Defendant is likely to continue to organize and sell tax-fraud plans and to assist in preparing documents understating her customers' tax liabilities.

Count II: Injunction Under I.R.C. § 7402

46. The United States incorporates by reference the allegations in paragraphs 1-45.

47. I.R.C. § 7402(a) authorizes a court to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing those laws.

48. Defendant's conduct substantially interferes with the enforcement of the internal revenue laws by promoting tax-fraud plans that she falsely advises customers will permit the customers legally to stop paying federal tax and filing federal tax returns.

49. Defendant substantially interferes with the administration of the internal revenue laws by selling frivolous documents to obstruct IRS collection actions.

50. The United States is irreparably harmed by Defendant's tax-fraud plans because customers who follow her advice fail to pay federal taxes or fail to file federal tax returns, and obstruct IRS examination and collection efforts.

51. The United States is irreparably harmed by Defendant's interference with IRS examinations and collection activities because it impedes the IRS's discovery and recovery of unreported and unpaid taxes.

52. Unless Defendant is enjoined, the IRS will have to devote substantial time and resources to identify and recover lost revenue from her customers.

53. The public interest will be advanced by enjoining Defendant because an injunction will stop her illegal conduct and the harm it is causing.

54. In the absence of an injunction backed by the Court's contempt powers, Defendant is likely to continue to obstruct and interfere with the enforcement of the internal revenue laws.

WHEREFORE, plaintiff the United States of America respectfully prays for the following:

A. That the Court find that Defendant has engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 and that injunctive relief under I.R.C. § 7408 is necessary and appropriate to prevent defendants, and any business or entity through which they operate, and anyone acting in concert with them, from further engaging in such conduct or any other conduct subject to penalty under the Internal Revenue Code;

B. That the Court find that Defendant has interfered with the enforcement of the internal revenue laws and that injunctive relief pursuant to I.R.C. § 7402(a) and the Court's inherent equity powers is appropriate to prevent her, and any business or entity through which she operates, and anyone acting in concert with her, from further engaging in such conduct;

C. That this Court, pursuant to I.R.C. § 7408, enter a permanent injunction prohibiting Defendant, individually and doing business under the names listed in this complaint or under any other name or using any other entity, and her representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with her, from directly or indirectly:

1. Engaging in activity subject to penalty under I.R.C. § 6700, including organizing or participating in the sale of a plan or arrangement and making a statement regarding the securing of any tax benefit that she knows or has reason to know is false or fraudulent as to any material matter;
2. Engaging in activity subject to penalty under I.R.C. § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that she knows will, if used, result in an understatement of tax liability;
3. Promoting, marketing, organizing, selling, or receiving payment for any plan or arrangement regarding the securing of any tax benefit that she knows or has reason to know is false or fraudulent as to any material matter; and
4. Engaging in any other activity subject to penalty under I.R.C. §§ 6700 or 6701 or any other penalty provision in the Internal Revenue Code;

D. That this Court, pursuant to I.R.C. §§ 7408 and 7402(a), enter a permanent injunction prohibiting Defendant, individually and doing business under the names listed in this complaint or under any other name or using any other entity, and her representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with her, from directly or indirectly:

1. Representing or assisting any other person before the IRS in connection with any matter, including preparing or assisting in the preparation of correspondence to the IRS on behalf of any other person;

2. Obstructing or advising or assisting anyone to obstruct IRS examinations, collections, or other IRS proceedings;
3. Advising anyone that they are not required to file federal tax returns or pay federal taxes;
4. Instructing, advising, or assisting anyone to stop withholding federal employment taxes from wages;
5. Selling or distributing any newsletter, book, manual, videotape, audiotape, or other material containing false commercial speech regarding the internal revenue laws or speech likely to incite others imminently to violate the internal revenue laws;
6. Organizing or selling any document purporting to enable a customer to discontinue paying federal tax;
7. Engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws; and
8. Misrepresenting the terms of this injunction.

E. That this Court, pursuant to I.R.C. § 7402(a), order Defendant to produce to counsel for the United States a list identifying by name, address, e-mail address, telephone number, and Social Security number, all Aware Group members and all persons and entities who have purchased defendant's tax-fraud plans, arrangements, or materials;

F. That this Court, pursuant to I.R.C. § 7402(a), order Defendant and her representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with her, to remove from Defendant's website and those websites over which she has control all tax-

fraud scheme promotional materials, false commercial speech regarding the internal revenue laws, and speech likely to incite others imminently to violate the internal revenue laws; to display prominently on the first page of those websites a complete copy of the permanent injunction; and to maintain those websites for one year with a complete copy of the Court's permanent injunction so displayed throughout that time;

G. That this Court permit the United States to conduct post-judgment discovery to ensure defendant's compliance with the permanent injunction; and

H. That this Court grant the United States such other relief, including costs, as is just and equitable.

REGINALD I. LLOYD
United States Attorney

s/ George J. Conits
GEORGE J. CONITS
Assistant United States Attorney
District Bar No. 234
District of South Carolina
P.O. Box 10067
Greenville, S.C. 29603

THOMAS M. NEWMAN
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-9926